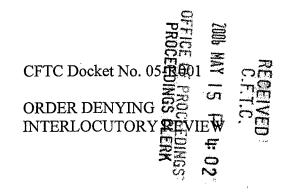
## UNITED STATES OF AMERICA Before the COMMODITY FUTURES TRADING COMMISSION

WANDA E. LOSCHERT

v.

JASON MARK ADAMS, INTERNATIONAL COMMODITY CLEARING, MILLENIUM FINANCIAL d/b/a/ FINANCIAL MANAGEMENT, LLC, THOMAS JASON QUILLIN and NATIONS INVESTMENTS, LLC



Respondent Nations Investments, LLC ("Nations") requests that the Commission take interlocutory review of the Administrative Law Judge's ("ALJ") February 6, 2006 ruling permitting complainant Wanda E. Loschert ("Loschert") to amend her complaint to add Nations as a respondent to her reparations claim. Complainant opposes the relief sought. For the following reasons, we find that immediate review of the ALJ's decision to add Nations is not warranted.

Commission Regulation 12.309 governs interlocutory review in reparations proceedings heard before an ALJ. Regulation 12.309(a)(3) provides that an interlocutory appeal "may be permitted, in the discretion of the Commission," when the ALJ has certified that "(i) a ruling sought to be appealed involves a controlling question of law or policy; (ii) an immediate appeal may materially advance the ultimate resolution of the issues in the proceeding; and (iii) subsequent reversal of the ruling would cause unnecessary delay or expense to the parties."

When the appeal is from a ruling that has not been certified, as is the case here, the

<sup>&</sup>lt;sup>1</sup> Nations also seeks review of the ALJ's February 23, 2006 order denying its request to certify the above ruling to the Commission for interlocutory review. Nations also asked the Commission to stay the proceedings; we denied that request in an order issued pursuant to delegated authority on March 21, 2006.

forgoing conditions of subsection (a)(3)(i)(ii)(iii) must be satisfied "and extraordinary circumstances [must be] shown to exist." Regulation 12.309(a)(4) (emphasis added).

In determining whether extraordinary circumstances exist, the Commission balances the benefits of immediate intervention against those flowing from its policy of discouraging piecemeal appeals, including the conservation of Commission resources and the preservation of the orderly conduct of Commission proceedings. *FDIC v. Shearson Lehman Hutton, Inc.*, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,731 at 44,015 (CFTC July 1, 1996). The party seeking review bears the burden of establishing extraordinary circumstances. To meet that burden, the petitioning party must demonstrate that a compelling need exists to correct an alleged error of judgment prior to the presiding officer's completion of his initial decision. *Id.* 

Nations contends that the Commission should immediately review and reverse the ALJ's ruling because it is not a proper party. The crux of Nations' argument is that the ALJ erred in finding that Nations is the "successor-in-interest" to respondent International Commodity Clearing ("ICC") and that, in any event, the Commodity Exchange Act ("CEA") does not provide for successor-in-interest liability. Nations urges that if we were to take interlocutory review and resolve this issue in its favor, the claim against it would be dismissed and the firm would not have to defend itself further.

In support of its contention that the CEA does not provide for successor-in-interest liability, Nations cites *Sandberg v. Gregory Commodity Options, Inc.*, 1981 WL 26107 (CFTC May 6, 1981). Contrary to Nations' suggestion, *Sandberg* did not hold that a successor-in-interest is not a proper party in a reparations case as a matter of law. Rather, the Commission in *Sandberg* declined to reach successor liability issues for prudential reasons. The Commission concluded that, based on the record before it, the issues were better left to a federal district court

in an action to enforce the judgment. The Commission noted that the CEA specifically provides for the enforcement of reparations awards in federal district courts and that "the district court [would be] better able to bare and analyze the corporate relationships and successions present in the instant case." *Id.* at \*4. Accordingly, it vacated the initial decision as to the disputed party on that basis. This does not amount to a jurisdictional holding that binds the ALJ in this case. Consequently, this case presents no error of judgment necessitating our immediate correction. The ALJ's ruling at most raises an important legal issue that might benefit from Commission clarification at an appropriate time. The presence of such an issue does not, by itself, rise to the level of extraordinary circumstances justifying immediate review. *FDIC*, ¶ 26,713 at 44,015.

In addition to failing to demonstrate extraordinary circumstances, Nations has not satisfied all of the conditions of Regulation 12.309(a)(3). A ruling in its favor would result in the dismissal of the complaint as to only one respondent and on that ground alone would not "materially advance the ultimate resolution of the issues in the proceeding." In contrast, recent decisions granting interlocutory review have involved the resolution of jurisdictional issues that culminated in the dismissal of the entire action. *E.g.*, *Plank v. Chesapeake Investment Services*, *Inc.*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,087 (CFTC May 31, 2005); *Khorram Properties*, *LLC v. McDonald Investments*, *Inc.*, [Current Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 30,145 (CFTC Oct. 13, 2005).

Based on the foregoing, we find that Nations has not shown persuasively that the benefits of immediate review take precedence over the sound policy of discouraging piecemeal appeals.

Accordingly, the petition for interlocutory review of the issue of whether Nations is a proper respondent is denied.

Additionally, Nations maintains that the ALJ "abused his discretion" in permitting complainant to amend the complaint after discovery had been completed. Under Regulation 12.307(a), an ALJ may, for "good cause shown," allow amendments to pleadings "[a]t any time before the parties have concluded their submissions of proof." After complainant asserted that Nations was the successor-in-interest to respondent ICC, the ALJ gave Nations the opportunity to show cause why it should not be included as a respondent on that basis. Nations filed a responsive pleading and complainant, in turn, filed a reply. Both parties argued the facts and circumstances and provided documents supporting their contentions as to Nations' status. After reviewing the parties' competing submissions, the ALJ determined that Nations was a successor-in-interest to Respondent International Commodity Clearing and that it had failed to show cause why it should not be named as a respondent. Whether he erred in doing so is a question we need not resolve at this time.

Nations also argues that it is prejudiced by being added as a party after discovery had closed. We believe that justice will be served by granting Nations the same opportunity to prepare for the hearing as the other parties have had. Accordingly, we order the ALJ to allow Nations a reasonable opportunity to engage in discovery pursuant to applicable rules.<sup>3</sup>

<sup>&</sup>lt;sup>3</sup> This is not to be construed as precedent for allowing interlocutory review of discovery disputes under Regulation 12.309. *In re First Commodity Corporation of Boston*, 1988 WL 232400 at \*1 (CFTC August 22, 1988)(declining to take interlocutory review of a discovery dispute because such disputes are a typical part of adjudication and the mere existence of such issues is seldom sufficient to establish extraordinary circumstances).

For the foregoing reasons, we decline to reach the issue Nations raises in its petition.

Interlocutory review of the ALJ's orders of February 6 and February 23, 2006 is denied.

IT IS SO ORDERED.

By the Commission (Chairman JEFFERY and Commissioners LUKKEN, BROWN-HRUSKA, HATFIELD and DUNN).

Eileen Donovan

Acting Secretary of the Commission Commodity Futures Trading Commission

Dated: May 15, 2006